

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.R. No. 5568 of 2005

Date of decision March 6, 2007

Gajjan Singh

.....Petitioner

Versus

Jagdish Rai and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINEY MITTAL

Present:- Sh. R. D. Bawa, Advocate
for the petitioner.

Sh. Puneesh Jindia, Advocate
for the respondents.

Viney Mittal, J (Oral)

The objections filed by petitioner-Gajjan Singh, have been dismissed by the Executing Court. He has approached this Court challenging the order passed by the Executing Court.

It appears from the record that a decree dated January 30, 1999 was passed in favour of Jagdish Rai for recovery of money against the defendant-judgment debtors M/S Devi Dayal Raj Kumar, Handiaya Bazar, Barnala. Execution proceedings were initiated by the decree holder on March 30, 1999 against Raj Kumar sole proprietor of the firm-judgment debtors. The firm filed objections on July 22, 2000. It raised various objections. The aforesaid objections were dismissed by the Executing Court on December 22, 2000. After the dismissal of the aforesaid objections daughters of Devi Dayal filed another set of objections. The aforesaid objections were also dismissed by the Executing Court on March 19, 2005.

It appears from the record that during execution

proceedings of the decree, an auction of the property of the judgment debtors had taken place on December 14, 1999. Rakesh Kumar and Kulwinder Kumar who were impleaded as respondents by this Court vide order dated November 27, 2006 were the successful auction purchasers. It further appears that on account of objections filed by daughters of Devi Dayal, the sale in favour of the auction purchasers could not be confirmed. Ultimately after dismissal of the objection petition, auction was confirmed in favour of the auction purchasers. Sale certificate was issued on April 8, 2005. Thereafter the shop in question was found to be locked and as such, the auction purchasers sought police help and filed an application before the Executing Court to get the actual physical possession of the shop. Police help was ordered by the Executing Court. Fresh objections were filed by the present petitioner-Gajjan Singh claiming that he was a tenant of Raj Kumar through a lease deed dated May 19, 1998. He claimed that since he was a tenant of Raj Kumar, therefore, he could not be dispossessed from the shop in question in execution of the decree against Raj Kumar and was entitled to protect his possession.

The aforesaid objections filed by Gajjan Singh have been dismissed by the Executing Court. As noticed earlier that since Raj Kumar, had filed objections on July 22, 2000 and at no point of time had ever claimed that shop in question was on lease/rent with anybody, therefore, the stand taken by Gajjan Singh was held to be an after-thought and a made up story. The lease deed relied upon by the Objector-Gajjan Singh has also been rejected holding that it was not shown to be duly executed between the parties inasmuch as, the stamp paper on which the aforesaid lease deed was shown to be written had never been purchased by Raj Kumar.

I have heard Sh. R. D. Bawa, learned counsel appearing for the petitioner and Sh. Puneesh Jindia, learned counsel appearing for the auction purchasers.

The facts as noticed above, have not been disputed.

Sh. R.D. Bawa, learned counsel appearing for the petitioner has argued that since the petitioner was in possession of the shop in question as tenant vide lease deed dated May 19, 1998 executed by Raj Kumar, therefore, he was entitled to protect his possession and the decree against Raj Kumar for recovery of money was neither binding upon him nor the auction proceedings conducted for recovery of the money could result into dispossession of the petitioner.

I have duly considered the aforesaid contention of learned counsel but find no merit in the same. It is apparent that a decree had been passed in favour of the decree-holder, Jagdish Rai, on January 30, 1999. Execution proceedings were initiated in the year 1999 itself. Originally Raj Kumar-judgment debtor filed objections. Thereafter, the daughters of Devi Dayal had filed separate objections. The aforesaid objections were dismissed by the Executing Court. None of the objectors at that point of time had ever claimed that the shop in question was on rent with any tenant. Even thereafter when the shop in question had been put on auction on December 14, 1999, Gajjan Singh-objector had raised no objection. The auction purchasers sought police help when the shop was found locked. The police help was provided by the Executing Court. In these circumstances, it is apparent that the present objections have been filed by Gajjan Singh at the behest of Raj Kumar-judgment debtor, who had failed in his attempt to stall the execution proceedings.

Consequently, I do not find any merit in the present petition. The same is dismissed.

(VINEY MITTAL)
JUDGE

March 6, 2007
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